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ERIC J. ROBINSON  
NIXON PEABODY LLP  
8180 GREENSBORO DRIVE, SUITE 800  
McLEAN, VIRGINIA 22102

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~~In re Application of  
Shunpei Yamazaki  
Application No. 08/962,601  
Filed: October 31, 1997  
Attorney Docket No. 0756-1711~~

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AND

DECISION ON PETITION

In re Application of  
Shunpei Yamazaki  
Application No. 09/583,087  
Filed: February 1, 2000  
Attorney Docket No. 0756-2203

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This is a decision on the petition under 37 CFR 1.53(e), filed September 5, 2000, requesting, in effect, a filing date of February 1, 2000 of the continued prosecution application (CPA) papers filed in parent Application No. 08/962,601 and that the CPA papers be accepted as a continuation application under 37 CFR 1.53(b) of parent Application No. 08/962,601, filed October 31, 1997.

The petition is **granted**.

A request for a CPA based on prior application No. 08/962,601 was deposited on February 1, 2000. However, the issue fee was paid in the prior application on September 3, 1999. On February 1, 2000, a petition under 37 CFR 1.313(b)(5) was filed in the prior application. However, the petition and the file of the prior application were not received by the appropriate official within sufficient time to avert issuance of the prior application and the prior application was patented on February 8, 2000. Accordingly, the petition to withdraw from issue filed on February 1, 2000 was dismissed as moot on March 27, 2000.

Since the prior application has issued as a patent, the CPA request filed on February 1, 2000 cannot be processed as a proper CPA.

The present petition requests that the request for a CPA be treated as a continuation application filed under 37 CFR 1.53(b). The petition is accompanied by what applicant claims as a copy of original Application No. 08/962,601 (specification, claims, and drawings), along with a copy of a signed Declaration and Power of Attorney filed in the parent application, and a preliminary amendment.

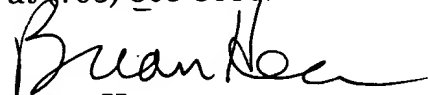
The instant continuation application under 37 CFR 1.53(b) filed on February 1, 2000 has been assigned application No. 09/583,087. All further communications regarding this application should be directed to Application No. 09/583,087.

The CPA papers filed in the parent application have been placed in Application No. 09/583,087. Receipt is acknowledged of the box of IDS papers filed on September 5, 2000.

Application No. 08/962,201 is being forwarded to Files Repository.

Application No. 09/583,087 is being forwarded to Initial Patent Examination Division for processing as a continuation application under 37 CFR 1.53(b), not as a CPA under 37 CFR 1.53(d), with a filing date of February 1, 2000, using the copy of the specification, claims, drawings and declaration supplied on September 5, 2000. No surcharge is required in Application No. 09/583,087.

Any questions concerning this decision on petition may be directed to Frances Hicks at (703) 305-8680.



Brian Hearn

Senior Petitions Examiner

Office of Petitions

Office of the Deputy Commissioner  
for Patent Examination Policy